

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF BELLEVUE,	)	
	)	
Petitioner,	)	No. 81473-2
	)	
v.	)	En Banc
	)	
SHIN H. LEE, ALEXIS BURETTO,	)	
LEONARDO CHAVOYA-GUDINO,	)	
CESAR CRISOSTOMO, DAVID E.	)	
MEANS, FADY NASIEM, GEORGE	)	
PIEKARSKI, JOSE VEGA-PEREZ,	)	
GUSTAVO ZANUDO-BON,	)	
	)	
Respondents.	)	Filed July 9, 2009
	)	

Owens, J. -- The Department of Licensing (DOL) suspended the respondents' driver's licenses for nonpayment of traffic citations in accordance with the procedures outlined in RCW 46.20.245 and 46.20.289. Respondents assert that the DOL's procedures did not meet due process requirements because the drivers were not given an in-person administrative hearing. We invalidated a prior set of procedures because drivers were not given any sort of hearing prior to the suspension of licenses, *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004), but we

hold that the new procedures, which include an administrative hearing that allows drivers to submit evidence, meet due process requirements.

## FACTS

Under RCW 46.20.289, the DOL suspends a driver's license when it receives notice from a court that the driver has failed to respond, appear, pay, or otherwise failed to comply with the terms of a traffic citation. When the DOL receives documentation from a court that would result in a suspension, it must give the driver 45 days written notice prior to the suspension. RCW 46.20.245(1). A driver may request an administrative review within 15 days of receiving notice.<sup>1</sup> RCW 46.20.245(2). The suspension is stayed during the review process. RCW 46.20.245(2)(d).

The administrative review consists of an internal review of all documents submitted to the DOL. RCW 46.20.245(2)(a). The administrative review is not in person or via telephone, unless requested by the driver and granted at the discretion of the DOL. *Id.* The administrative review addresses only (1) “[w]hether the records relied on by the department identify the correct person” and (2) “[w]hether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.” RCW 46.20.245(2)(b)(i), (ii). The burden is on the person requesting

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<sup>1</sup> The DOL can also grant administrative review if requested more than 15 days after notice if the driver shows good cause. RCW 46.20.245(2).

review to show by a preponderance of the evidence that the person is not subject to the suspension. RCW 46.20.245(2)(c).

Using the above procedures, the DOL suspended the respondents' driver's licenses for failure to pay a traffic citation, and the respondents were later cited for driving with a suspended license. Respondents did not request an administrative review. The respondents then challenged the DOL's procedures for suspending their licenses, asserting that the procedures did not provide a meaningful opportunity to be heard and therefore did not meet due process requirements. The district court held that the procedures were constitutional, but the superior court reversed, holding that the procedures did not meet due process requirements. The city of Bellevue appealed the superior court's ruling directly to this court, contending that the revised DOL procedures are constitutional because they provide both notice and an opportunity to be heard.

### ISSUE

Do the license suspension procedures outlined in RCW 46.20.245 and 46.20.289 meet due process requirements?

### STANDARD OF REVIEW

We review the constitutionality of a statute de novo. *State v. Abrams*, 163 Wn.2d 277, 282, 178 P.3d 1021 (2008). A statute is presumed to be constitutional,

and the party challenging the constitutionality of a statute must prove its unconstitutionality “beyond a reasonable doubt.” *Island County v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998).

#### ANALYSIS

In cases involving the potential deprivation of a private interest by the government, this court applies the *Mathews* balancing test to ensure that due process requirements are met. *Gourley v. Gourley*, 158 Wn.2d 460, 467-68, 145 P.3d 1185 (2006) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). The three factors of the *Mathews* test are (1) the potentially affected interest; (2) the risk of an erroneous deprivation of that interest through the challenged procedures, and probable value of additional procedural safeguards; and (3) the government’s interest, including the potential burden of additional procedures. *Mathews*, 424 U.S. at 335. Due process does not require an error-free process, so the mere possibility of error is insufficient to invalidate the process. *Mackey v. Montrym*, 443 U.S. 1, 13, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979).

In 2004, this court applied the *Mathews* test to the driver’s license suspension procedures and held that they violated due process because they did not provide adequate procedural safeguards to ensure against the erroneous deprivation of a driver’s license. *Moore*, 151 Wn.2d at 677. Those procedures did not provide for any

sort of administrative hearing prior to suspension. *Id.* at 666-67. In response to the court's decision in *Moore*, the legislature changed the driver's license suspension procedures to provide for an administrative hearing prior to suspension, if requested by the affected driver. Laws of 2005, ch. 288, §§ 5, 6. We now apply the *Mathews* test to the new procedures to determine if they satisfy due process.

I. The First *Mathews* Factor: The Private Interest Affected

The first *Mathews* factor is “the nature and weight of the private interest affected by the official action challenged.” *Moore*, 151 Wn.2d at 670. In *Moore*, this court held that the continued use of a driver's license is important because it can significantly affect a person's ability to earn a living and noted the United States Supreme Court's holding that such an interest is “‘substantial.’” *Id.* at 671 (quoting *Mackey*, 443 U.S. at 11). That same substantial privacy interest is present in this case.

II. The Second *Mathews* Factor: The Risk of Erroneous Deprivation and Probable Value of Additional Procedures

The second *Mathews* factor is “the risk of erroneous deprivation of the interest at stake through the procedures used and the probable value, if any, of additional or substitute safeguards.” *Moore*, 151 Wn.2d at 671. In *Moore*, we held that “the fatal defect” was that there was no administrative hearing prior to suspension, and that therefore, drivers could have their driver's licenses erroneously suspended due to ministerial errors. *Id.* at 672, 675. As described below, the new administrative review

is specifically designed to correct such ministerial errors, thereby reducing the risk of erroneous deprivation described in *Moore* and also reducing any potential value of additional procedures.

*A. Risk of Erroneous Deprivation*

Respondents assert that the administrative review process is unconstitutional because it does not adequately address the risk of ministerial errors such as misidentification or a wrongly credited payment, but respondents never presented any evidence that such errors are widespread or that any such errors are not able to be resolved through the current system. In fact, respondents do not cite even one example of a ministerial error that was not resolved through the current system.<sup>2</sup>

Respondents contend that the DOL will examine only its own records, but the statute states that the review will consist of documents “submitted or available to the department.” RCW 46.20.245(2)(a). There is nothing stopping a driver from submitting documents demonstrating the ministerial error; indeed that is the purpose of the administrative review. The statute clearly contemplates that the driver will submit such documentation, as demonstrated by subsection (2)(c), which states that the driver “has the burden of showing by a preponderance of the evidence that the

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<sup>2</sup> Respondents cite only two incidents that occurred when no review system existed. These two examples involve inaccurate court records submitted to the DOL, and the respondents never presented evidence that showed beyond a reasonable doubt that these two situations could not be resolved through the new review system created to address ministerial errors.

person is not subject to the withholding of the driving privilege.”

Further, DOL policy states: “A specialist will review all documents received by DOL on the pending action[, c]heck Imaging documents along with the court records, review the record for accuracy and provide a written response of the results. *It is the customer [sic] responsibility to provide any other relevant information.*” Clerk’s Papers at 79 (emphasis added). In the case of ministerial error, this review process is designed to catch and resolve that error. Respondents have presented no evidence that it will not successfully do so.

*B. Probable Value of Additional Procedures*

Respondents also fail to explain how additional procedures, such as an in-person hearing, would lower the risk of erroneous deprivation. Respondents are unclear as to what errors they believe could be resolved through an in-person hearing, and respondents have provided no evidence that there is any additional value from such a hearing.

When there is a ministerial error (although respondents present no evidence of such error), there is no reason to believe that the error cannot be easily resolved through the current administrative review process. As noted above, the current process allows drivers to submit evidence of any errors. The DOL’s suspension process involves processing paperwork, not fact-finding, and therefore there is no

reason that an in-person hearing will resolve ministerial errors that an administrative review will not. *See Dixon v. Love*, 431 U.S. 105, 113-14, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977) (holding that the risk of erroneous deprivation of a driver’s license was low when the suspension process was largely automatic and that an in-person hearing might make a driver feel better about being heard but would not actually contribute to protecting the driver’s rights).<sup>3</sup> Respondents failed to cite any examples of errors where additional procedural safeguards would lower the risk of erroneous deprivation.

Respondents also contend that due process requires the ability to present testimony and cross-examine witnesses. However, respondents have not shown that is required in order to minimize the risk of error in this largely automatic process.

“‘[T]he quantum and quality of the process due in a particular situation depend upon the need to serve the purpose of minimizing the risk of error.’” *In re Pers. Restraint of McCarthy*, 161 Wn.2d 234, 241-42, 164 P.3d 1283 (2007) (alteration in original) (quoting *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 13, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979)). There are many situations where the ability to present live testimony and cross-examine witnesses are necessary to satisfy due

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<sup>3</sup> Respondents seem to contend that the “right to be heard” means the right to deliver information verbally to the fact finder. There is no reason that due process cannot be achieved effectively through written communication in situations such as this, where the suspension process is automatic and involves processing paperwork. The word “hearing” can include this type of review process as long as the driver has the right to be heard (achieved here through the submission of corrective documents to the DOL).



process. This is not one of them.

### III. The Third *Mathews* Factor: The State's Interest

The third Mathews factor is “the State’s interest in the fiscal and administrative burden that additional or substitute procedural requirements would entail.” *Moore*, 151 Wn.2d at 676. As in *Moore*, the city has not presented evidence of the burden caused by additional procedures. *Id.* at 677. However, the city does have an interest in the efficient and cost-effective administration of the driver’s license system, as well as ensuring that drivers appear, pay, and comply with the terms of traffic citations. *Id.* at 687 (Bridge, J., dissenting). When added to the low risk of mistaken license suspensions and the low (if any) value of additional procedures, we hold that the *Mathews* factors weigh in favor of the city and uphold the current license suspension procedures.

### CONCLUSION

Because the DOL’s procedures provide both notice and a meaningful opportunity to be heard, they meet due process requirements. We reverse the superior court and uphold the driver’s license suspension procedures in RCW 46.20.245 and 46.20.289.

AUTHOR:

Justice Susan Owens

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WE CONCUR:

Chief Justice Gerry L. Alexander

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Justice Charles W. Johnson

Justice Mary E. Fairhurst

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Justice Barbara A. Madsen

Justice James M. Johnson

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Justice Debra L. Stephens

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Justice Tom Chambers

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